

PROPOSED AMENDMENT
SENATE AMENDMENTS TO S.B. 1374
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 13-2008, Arizona Revised Statutes, is amended to
3 read:

4 13-2008. Taking or knowingly accepting identity of another
5 person or entity; classification

6 A. A person commits taking the identity of another person or entity if
7 the person knowingly takes, purchases, manufactures, records, possesses or
8 uses any personal identifying information or entity identifying information
9 of another person or entity, including a real or fictitious person or entity,
10 without the consent of that other person or entity, with the intent to obtain
11 or use the other person's or entity's identity for any unlawful purpose or to
12 cause loss to a person or entity whether or not the person or entity actually
13 suffers any economic loss as a result of the offense, **OR WITH THE INTENT TO**
14 **OBTAIN OR CONTINUE EMPLOYMENT.**

15 B. A PERSON COMMITS KNOWINGLY ACCEPTING THE IDENTITY OF ANOTHER PERSON
16 OR ENTITY IF THE PERSON, IN HIRING AN EMPLOYEE, KNOWINGLY DOES BOTH OF THE
17 FOLLOWING:

18 1. ACCEPTS ANY PERSONAL IDENTIFYING INFORMATION OR ENTITY IDENTIFYING
19 INFORMATION OF ANOTHER PERSON OR ENTITY FROM AN INDIVIDUAL AND KNOWS THAT THE
20 INDIVIDUAL IS NOT THE ACTUAL PERSON OR ENTITY IDENTIFIED BY THAT INFORMATION.

21 2. USES THAT IDENTITY INFORMATION FOR THE PURPOSE OF DETERMINING
22 WHETHER THE INDIVIDUAL WHO PRESENTED THAT IDENTITY INFORMATION HAS THE LEGAL
23 RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS

DESCRIBED AND DETERMINED UNDER THE PROCESSES AND PROCEDURES UNDER 8 UNITED STATES CODE SECTION 1324a.

~~B.~~ C. On the request of a person or entity, a peace officer in any jurisdiction in which an element of ~~the~~ AN offense UNDER THIS SECTION is committed, a result of ~~the~~ AN offense UNDER THIS SECTION occurs or the person or entity whose identity is taken OR ACCEPTED resides or is located shall take a report. The peace officer may provide a copy of the report to any other law enforcement agency that is located in a jurisdiction in which a violation of this section occurred.

~~C.~~ D. If a defendant is alleged to have committed multiple violations of this section within the same county, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in any precinct in which a violation is alleged to have occurred. If a defendant is alleged to have committed multiple violations of this section within the state, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in any county in which a violation is alleged to have occurred.

~~D.~~ E. This section does not apply to a violation of section 4-241 by a person who is under twenty-one years of age.

~~E.~~ F. Taking the identity of another person or entity OR KNOWINGLY ACCEPTING THE IDENTITY OF ANOTHER PERSON is a class 4 felony.

Sec. 2. Section 13-2010, Arizona Revised Statutes, is amended to read:

13-2010. Trafficking in the identity of another person or entity; classification

A. A person commits trafficking in the identity of another person or entity if the person knowingly sells, transfers or transmits any personal identifying information or entity identifying information of another person or entity, including a real or fictitious person or entity, without the consent of the other person or entity for any unlawful purpose or to cause loss to the person or entity whether or not the other person or entity

1 actually suffers any economic loss, OR ALLOWING ANOTHER PERSON TO OBTAIN OR
2 CONTINUE EMPLOYMENT.

3 B. This section does not apply to a violation of section 4-241 by a
4 person who is under twenty-one years of age.

5 C. Trafficking in the identity of another person or entity is a
6 class 2 felony.

7 Sec. 3. Section 23-211, Arizona Revised Statutes, is amended to read:

8 23-211. Definitions

9 In this article, unless the context otherwise requires:

10 1. "Agency" means any agency, department, board or commission of this
11 state or a county, city or town that issues a license for purposes of
12 operating a business in this state.

13 2. "EMPLOY" MEANS HIRING AN EMPLOYEE AFTER DECEMBER 31, 2007.

14 3. "Employee":

15 (a) Means any person who ~~performs employment~~ PROVIDES services OR
16 LABOR for an employer ~~pursuant to an employment relationship between the~~
17 ~~employee and employer~~ IN THIS STATE FOR WAGES OR OTHER REMUNERATION.

18 (b) DOES NOT INCLUDE AN INDEPENDENT CONTRACTOR.

19 4. "Employer" means any individual or type of organization that
20 transacts business in this state, that has a license issued by an agency in
21 this state, ~~and that employs one or more individuals who perform employment~~
22 ~~services~~ EMPLOYEES in this state. Employer includes this state, any
23 political subdivision of this state and self-employed persons. IN THE CASE
24 OF AN INDEPENDENT CONTRACTOR, EMPLOYER MEANS THE INDEPENDENT CONTRACTOR AND
25 DOES NOT MEAN THE PERSON OR ORGANIZATION THAT USES THE CONTRACT LABOR.

26 ~~2.~~ 5. "~~Basic pilot~~ E-VERIFY program" means the ~~basic~~ employment
27 verification pilot program as jointly administered by the United States
28 department of homeland security and the social security administration or ANY
29 OF its successor ~~program~~ PROGRAMS.

30 6. "INDEPENDENT CONTRACTOR" MEANS ANY INDIVIDUAL OR ENTITY THAT
31 CARRIES ON AN INDEPENDENT BUSINESS, THAT CONTRACTS TO DO A PIECE OF WORK
32 ACCORDING TO THE INDIVIDUAL'S OR ENTITY'S OWN MEANS AND METHODS AND THAT IS

1 SUBJECT TO CONTROL ONLY AS TO RESULTS. WHETHER AN INDIVIDUAL OR ENTITY IS AN
2 INDEPENDENT CONTRACTOR IS DETERMINED ON A CASE-BY-CASE BASIS THROUGH VARIOUS
3 FACTORS, INCLUDING WHETHER THE INDIVIDUAL OR ENTITY:

4 (a) SUPPLIES THE TOOLS OR MATERIALS.

5 (b) MAKES SERVICES AVAILABLE TO THE GENERAL PUBLIC.

6 (c) WORKS FOR A NUMBER OF CLIENTS AT THE SAME TIME.

7 (d) HAS AN OPPORTUNITY FOR PROFIT OR LOSS AS A RESULT OF LABOR OR
8 SERVICE PROVIDED.

9 (e) INVESTS IN THE FACILITIES FOR WORK.

10 (f) DIRECTS THE ORDER OR SEQUENCE IN WHICH THE WORK IS COMPLETED.

11 (g) DETERMINES THE HOURS WHEN THE WORK IS COMPLETED.

12 ~~5.~~ 7. "Intentionally" has the same meaning prescribed in section
13 13-105.

14 ~~6.~~ 8. "Knowingly employ an unauthorized alien" means the actions
15 described in 8 United States Code section 1324a. This term shall be
16 interpreted consistently with 8 United States Code section 1324a and any
17 applicable federal rules and regulations.

18 ~~7.~~ 9. "License":

19 (a) Means any agency permit, certificate, approval, registration,
20 charter or similar form of authorization that is required by law and that is
21 issued by any agency for the purposes of operating a business in this state.

22 (b) Includes:

23 (i) Articles of incorporation under title 10.

24 (ii) A certificate of partnership, a partnership registration or
25 articles of organization under title 29.

26 (iii) A grant of authority issued under title 10, chapter 15.

27 (iv) Any transaction privilege tax license.

28 (c) Does not include:

29 (i) Any license issued pursuant to title 45 or 49 or rules adopted
30 pursuant to those titles.

31 (ii) Any professional license.

1 10. "SOCIAL SECURITY NUMBER VERIFICATION SERVICE" MEANS THE PROGRAM
2 ADMINISTERED BY THE SOCIAL SECURITY ADMINISTRATION OR ANY OF ITS SUCCESSOR
3 PROGRAMS.

4 ~~8-~~ 11. "Unauthorized alien" means an alien who does not have the
5 legal right or authorization under federal law to work in the United States
6 as described in 8 United States Code section 1324a(h)(3).

7 Sec. 4. Section 23-212, Arizona Revised Statutes, is amended to read:

8 23-212. Knowingly employing unauthorized aliens; prohibition;
9 false and frivolous complaints; violation;
10 classification; license suspension and revocation;
11 affirmative defense

12 A. An employer shall not ~~intentionally employ an unauthorized alien or~~
13 knowingly employ an unauthorized alien. IF, IN THE CASE WHEN AN EMPLOYER
14 USES A CONTRACT, SUBCONTRACT OR OTHER INDEPENDENT CONTRACTOR AGREEMENT TO
15 OBTAIN THE LABOR OF AN ALIEN IN THIS STATE, THE EMPLOYER KNOWS THAT THE ALIEN
16 IS AN UNAUTHORIZED ALIEN WITH RESPECT TO PERFORMING THE LABOR, THE EMPLOYER
17 VIOLATES THIS SUBSECTION.

18 B. THE ATTORNEY GENERAL SHALL PRESCRIBE A COMPLAINT FORM FOR A PERSON
19 TO ALLEGE A VIOLATION OF SUBSECTION A OF THIS SUBSECTION. THE COMPLAINANT
20 SHALL NOT BE REQUIRED TO LIST THE COMPLAINANT'S SOCIAL SECURITY NUMBER ON THE
21 COMPLAINT FORM OR TO HAVE THE COMPLAINT FORM NOTARIZED. On receipt of a
22 complaint ON A PRESCRIBED COMPLAINT FORM that an employer allegedly
23 ~~intentionally employs an unauthorized alien or~~ knowingly employs an
24 unauthorized alien, the attorney general or county attorney shall investigate
25 whether the employer has violated subsection A OF THIS SUBSECTION. IF A
26 COMPLAINT IS RECEIVED BUT IS NOT SUBMITTED ON A PRESCRIBED COMPLAINT FORM,
27 THE ATTORNEY GENERAL OR COUNTY ATTORNEY MAY INVESTIGATE WHETHER THE EMPLOYER
28 HAS VIOLATED SUBSECTION A OF THIS SUBSECTION. THIS SUBSECTION SHALL NOT BE
29 CONSTRUED TO PROHIBIT THE FILING OF ANONYMOUS COMPLAINTS THAT ARE NOT
30 SUBMITTED ON A PRESCRIBED COMPLAINT FORM. THE ATTORNEY GENERAL OR COUNTY
31 ATTORNEY SHALL NOT INVESTIGATE COMPLAINTS THAT ARE BASED SOLELY ON RACE,
32 COLOR OR NATIONAL ORIGIN. A COMPLAINT THAT IS SUBMITTED TO A COUNTY ATTORNEY

1 SHALL BE SUBMITTED TO THE COUNTY ATTORNEY IN THE COUNTY IN WHICH THE ALLEGED
2 UNAUTHORIZED ALIEN IS OR WAS EMPLOYED BY THE EMPLOYER. THE COUNTY SHERIFF OR
3 ANY OTHER LOCAL LAW ENFORCEMENT AGENCY MAY ASSIST IN INVESTIGATING A
4 COMPLAINT. When investigating a complaint, the attorney general or county
5 attorney shall verify the work authorization of the alleged unauthorized
6 alien with the federal government pursuant to 8 United States Code section
7 1373(c). A state, county or local official shall not attempt to
8 independently make a final determination on whether an alien is authorized to
9 work in the United States. An alien's immigration status or work
10 authorization status shall be verified with the federal government pursuant
11 to 8 United States Code section 1373(c). A person who knowingly files a
12 false and frivolous complaint under this subsection is guilty of a class 3
13 misdemeanor.

14 C. If, after an investigation, the attorney general or county attorney
15 determines that the complaint is not frivolous AND FALSE:

16 1. The attorney general or county attorney shall notify the United
17 States immigration and customs enforcement of the unauthorized alien.

18 2. The attorney general or county attorney shall notify the local law
19 enforcement agency of the unauthorized alien.

20 3. The attorney general shall notify the appropriate county attorney
21 to bring an action pursuant to subsection D OF THIS SECTION if the complaint
22 was originally filed with the attorney general.

23 D. An action for a violation of subsection A shall be brought against
24 the employer by the county attorney in the county where the unauthorized
25 alien employee is OR WAS employed BY THE EMPLOYER. The county attorney shall
26 not bring an action against any employer for any violation of subsection A OF
27 THIS SECTION that occurs before January 1, 2008. A second violation of this
28 section shall be based only on an unauthorized alien who is OR WAS employed
29 by the employer after an action has been brought for a violation of
30 subsection A OF THIS SECTION OR SECTION 23-212.01, SUBSECTION A.

1 E. For any action in superior court under this section, the court
2 shall expedite the action, including assigning the hearing at the earliest
3 practicable date.

4 F. On a finding of a violation of subsection A OF THIS SECTION:

5 1. For a first violation ~~during a three year period that is a knowing~~
6 ~~violation~~ of subsection A OF THIS SECTION, the court:

7 (a) Shall order the employer to terminate the employment of all
8 unauthorized aliens.

9 (b) Shall order the employer to be subject to a three year
10 probationary period FOR THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN
11 PERFORMED WORK. During the probationary period the employer shall file
12 quarterly reports IN THE FORM PROVIDED IN SECTION 23-722.01 with the county
13 attorney of each new employee who is hired by the employer at the ~~specific~~
14 BUSINESS location where the unauthorized alien performed work.

15 (c) Shall order the employer to file a signed sworn affidavit with the
16 county attorney within three business days after the order is issued. The
17 affidavit shall state that the employer has terminated the employment of all
18 unauthorized aliens IN THIS STATE and that the employer will not
19 intentionally or knowingly employ an unauthorized alien IN THIS STATE. The
20 court shall order the appropriate agencies to suspend all licenses subject to
21 this subdivision that are held by the employer if the employer fails to file
22 a signed sworn affidavit with the county attorney within three business days
23 after the order is issued. All licenses that are suspended under this
24 subdivision shall remain suspended until the employer files a signed sworn
25 affidavit with the county attorney. Notwithstanding any other law, on filing
26 of the affidavit the suspended licenses shall be reinstated immediately by
27 the appropriate agencies. For the purposes of this subdivision, the licenses
28 that are subject to suspension under this subdivision are all licenses that
29 are held by the employer ~~and that are necessary to operate the employer's~~
30 ~~business at the employer's~~ SPECIFIC TO THE business location where the
31 unauthorized alien performed work. If ~~a license is not necessary to operate~~
32 ~~the employer's business at~~ THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO

1 the ~~specific~~ BUSINESS location where the unauthorized alien performed work,
2 but a license is necessary to operate the employer's business in general, the
3 licenses that are subject to suspension under this subdivision are all
4 licenses that are held by the employer at the employer's primary place of
5 business. On receipt of the court's order and notwithstanding any other law,
6 the appropriate agencies shall suspend the licenses according to the court's
7 order. The court shall send a copy of the court's order to the attorney
8 general and the attorney general shall maintain the copy pursuant to
9 subsection G OF THIS SECTION.

10 (d) May order the appropriate agencies to suspend all licenses
11 described in subdivision (c) of this paragraph that are held by the employer
12 for not to exceed ten business days. The court shall base its decision to
13 suspend under this subdivision on any evidence or information submitted to it
14 during the action for a violation of this subsection and shall consider the
15 following factors, if relevant:

- 16 (i) The number of unauthorized aliens employed by the employer.
- 17 (ii) Any prior misconduct by the employer.
- 18 (iii) The degree of harm resulting from the violation.
- 19 (iv) Whether the employer made good faith efforts to comply with any
20 applicable requirements.
- 21 (v) The duration of the violation.
- 22 (vi) The role of the directors, officers or principals of the employer
23 in the violation.
- 24 (vii) Any other factors the court deems appropriate.

25 ~~2. For a first violation during a five year period that is an~~
26 ~~intentional violation of subsection A, the court shall:~~

27 ~~(a) Order the employer to terminate the employment of all unauthorized~~
28 ~~aliens.~~

29 ~~(b) Order the employer to be subject to a five year probationary~~
30 ~~period. During the probationary period the employer shall file quarterly~~
31 ~~reports with the county attorney of each new employee who is hired by the~~

1 ~~employer at the specific location where the unauthorized alien performed~~
2 ~~work.~~

3 ~~(c) Order the appropriate agencies to suspend all licenses, described~~
4 ~~in subdivision (d) of this paragraph that are held by the employer for a~~
5 ~~minimum of ten days. The court shall base its decision on the length of the~~
6 ~~suspension under this subdivision on any evidence or information submitted to~~
7 ~~it during the action for a violation of this subsection and shall consider~~
8 ~~the following factors, if relevant:~~

- 9 ~~(i) The number of unauthorized aliens employed by the employer.~~
10 ~~(ii) Any prior misconduct by the employer.~~
11 ~~(iii) The degree of harm resulting from the violation.~~
12 ~~(iv) Whether the employer made good faith efforts to comply with any~~
13 ~~applicable requirements.~~
14 ~~(v) The duration of the violation.~~
15 ~~(vi) The role of the directors, officers or principals of the employer~~
16 ~~in the violation.~~
17 ~~(vii) Any other factors the court deems appropriate.~~

18 ~~(d) Order the employer to file a signed sworn affidavit with the~~
19 ~~county attorney. The affidavit shall state that the employer has terminated~~
20 ~~the employment of all unauthorized aliens and that the employer will not~~
21 ~~intentionally or knowingly employ an unauthorized alien. All licenses that~~
22 ~~are suspended under this subdivision shall remain suspended until the~~
23 ~~employer files a signed sworn affidavit with the county attorney. For the~~
24 ~~purposes of this subdivision, the licenses that are subject to suspension~~
25 ~~under this subdivision are all licenses that are held by the employer and~~
26 ~~that are necessary to operate the employer's business at the employer's~~
27 ~~business location where the unauthorized alien performed work. If a license~~
28 ~~is not necessary to operate the employer's business at the specific location~~
29 ~~where the unauthorized alien performed work, but a license is necessary to~~
30 ~~operate the employer's business in general, the licenses that are subject to~~
31 ~~suspension under this subdivision are all licenses that are held by the~~
32 ~~employer at the employer's primary place of business. On receipt of the~~

~~court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the attorney general and the attorney general shall maintain the copy pursuant to subsection G.~~

~~3.~~ 2. For a second violation ~~of subsection A during the period of probation~~, AS DESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer ~~and that are necessary to operate the employer's business at the employer's~~ SPECIFIC TO THE business location where the unauthorized alien performed work. If ~~a license is not necessary to operate the employer's business at~~ THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO the ~~specific~~ BUSINESS location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses.

3. THE VIOLATION SHALL BE CONSIDERED:

(a) A FIRST VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE VIOLATION DID NOT OCCUR DURING A PROBATIONARY PERIOD ORDERED BY THE COURT UNDER THIS SUBSECTION OR SECTION 23-212.01, SUBSECTION A FOR THAT EMPLOYER'S BUSINESS LOCATION.

(b) A SECOND VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE VIOLATION OCCURRED DURING A PROBATIONARY PERIOD ORDERED BY THE COURT UNDER THIS SUBSECTION SECTION 23-212.01, SUBSECTION A FOR THAT EMPLOYER'S BUSINESS LOCATION.

G. The attorney general shall maintain copies of court orders that are received pursuant to subsection F OF THIS SECTION and shall maintain a database of the employers AND BUSINESS LOCATIONS who have a first violation of subsection A OF THIS SECTION and make the court orders available on the attorney general's website.

1 H. On determining whether an employee is an unauthorized alien, the
2 court shall consider only the federal government's determination pursuant to
3 8 United States Code section 1373(c). The federal government's determination
4 creates a rebuttable presumption of the employee's lawful status. The court
5 may take judicial notice of the federal government's determination and may
6 request the federal government to provide automated or testimonial
7 verification pursuant to 8 United States Code section 1373(c).

8 I. For the purposes of this section, proof of verifying the employment
9 authorization of an employee through the ~~basic-pilot~~ E-VERIFY program creates
10 a rebuttable presumption that an employer did not ~~intentionally employ an~~
11 ~~unauthorized alien or~~ knowingly employ an unauthorized alien.

12 J. For the purposes of this section, an employer who establishes that
13 it has complied in good faith with the requirements of 8 United States Code
14 section ~~1324b~~ 1324a(b) establishes an affirmative defense that the employer
15 did not ~~intentionally or~~ knowingly employ an unauthorized alien. AN EMPLOYER
16 IS CONSIDERED TO HAVE COMPLIED WITH THE REQUIREMENTS OF 8 UNITED STATES CODE
17 SECTION 1324a(b), NOTWITHSTANDING AN ISOLATED, SPORADIC OR ACCIDENTAL
18 TECHNICAL OR PROCEDURAL FAILURE TO MEET THE REQUIREMENTS, IF THERE IS A GOOD
19 FAITH ATTEMPT TO COMPLY WITH THE REQUIREMENTS.

20 Sec. 5. Title 23, chapter 2, article 2, Arizona Revised Statutes, is
21 amended by adding section 23-212.01, to read:

22 23-212.01. Intentionally employing unauthorized aliens;
23 prohibition; false and frivolous complaints;
24 violation; classification; license suspension and
25 revocation; affirmative defense

26 A. AN EMPLOYER SHALL NOT INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN.
27 IF, IN THE CASE WHEN AN EMPLOYER VIOLATES THIS SUBSECTION IF THE EMPLOYER
28 USES A CONTRACT, SUBCONTRACT OR OTHER INDEPENDENT CONTRACTOR AGREEMENT TO
29 OBTAIN THE LABOR OF AN ALIEN IN THIS STATE, THE EMPLOYER KNOWS THAT THE ALIEN
30 IS AN UNAUTHORIZED ALIEN WITH RESPECT TO PERFORMING THE LABOR, THE EMPLOYER
31 VIOLATES THIS SUBSECTION.

1 B. THE ATTORNEY GENERAL SHALL PRESCRIBE A COMPLAINT FORM FOR A PERSON
2 TO ALLEGE A VIOLATION OF SUBSECTION A OF THIS SECTION. THE COMPLAINANT SHALL
3 NOT BE REQUIRED TO LIST THE COMPLAINANT'S SOCIAL SECURITY NUMBER ON THE
4 COMPLAINT FORM OR TO HAVE THE COMPLAINT FORM NOTARIZED. ON RECEIPT OF A
5 COMPLAINT ON A PRESCRIBED COMPLAINT FORM THAT AN EMPLOYER ALLEGEDLY
6 INTENTIONALLY EMPLOYS AN UNAUTHORIZED ALIEN, THE ATTORNEY GENERAL OR COUNTY
7 ATTORNEY SHALL INVESTIGATE WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION A OF
8 THIS SECTION. IF A COMPLAINT IS RECEIVED BUT IS NOT SUBMITTED ON A
9 PRESCRIBED COMPLAINT FORM, THE ATTORNEY GENERAL OR COUNTY ATTORNEY MAY
10 INVESTIGATE WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION A OF THIS SECTION.
11 THIS SUBSECTION SHALL NOT BE CONSTRUED TO PROHIBIT THE FILING OF ANONYMOUS
12 COMPLAINTS THAT ARE NOT SUBMITTED ON A PRESCRIBED COMPLAINT FORM. THE
13 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT INVESTIGATE COMPLAINTS THAT ARE
14 BASED SOLELY ON RACE, COLOR OR NATIONAL ORIGIN. A COMPLAINT THAT IS
15 SUBMITTED TO A COUNTY ATTORNEY SHALL BE SUBMITTED TO THE COUNTY ATTORNEY IN
16 THE COUNTY IN WHICH THE ALLEGED UNAUTHORIZED ALIEN IS OR WAS EMPLOYED BY THE
17 EMPLOYER. THE COUNTY SHERIFF OR ANY OTHER LOCAL LAW ENFORCEMENT AGENCY MAY
18 ASSIST IN INVESTIGATING A COMPLAINT. WHEN INVESTIGATING A COMPLAINT, THE
19 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL VERIFY THE WORK AUTHORIZATION OF
20 THE ALLEGED UNAUTHORIZED ALIEN WITH THE FEDERAL GOVERNMENT PURSUANT TO 8
21 UNITED STATES CODE SECTION 1373(c). A STATE, COUNTY OR LOCAL OFFICIAL SHALL
22 NOT ATTEMPT TO INDEPENDENTLY MAKE A FINAL DETERMINATION ON WHETHER AN ALIEN
23 IS AUTHORIZED TO WORK IN THE UNITED STATES. AN ALIEN'S IMMIGRATION STATUS OR
24 WORK AUTHORIZATION STATUS SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT
25 PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c). A PERSON WHO KNOWINGLY
26 FILES A FALSE AND FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION IS GUILTY OF A
27 CLASS 3 MISDEMEANOR.

28 C. IF, AFTER AN INVESTIGATION, THE ATTORNEY GENERAL OR COUNTY ATTORNEY
29 DETERMINES THAT THE COMPLAINT IS NOT FRIVOLOUS AND FALSE:

30 1. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE UNITED
31 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OF THE UNAUTHORIZED ALIEN.

1 2. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE LOCAL LAW
2 ENFORCEMENT AGENCY OF THE UNAUTHORIZED ALIEN.

3 3. THE ATTORNEY GENERAL SHALL NOTIFY THE APPROPRIATE COUNTY ATTORNEY
4 TO BRING AN ACTION PURSUANT TO SUBSECTION D OF THIS SECTION IF THE COMPLAINT
5 WAS ORIGINALLY FILED WITH THE ATTORNEY GENERAL.

6 D. AN ACTION FOR A VIOLATION OF SUBSECTION A OF THIS SECTION SHALL BE
7 BROUGHT AGAINST THE EMPLOYER BY THE COUNTY ATTORNEY IN THE COUNTY WHERE THE
8 UNAUTHORIZED ALIEN EMPLOYEE IS OR WAS EMPLOYED BY THE EMPLOYER. THE COUNTY
9 ATTORNEY SHALL NOT BRING AN ACTION AGAINST ANY EMPLOYER FOR ANY VIOLATION OF
10 SUBSECTION A OF THIS SUBSECTION THAT OCCURS BEFORE JANUARY 1, 2008. A SECOND
11 VIOLATION OF THIS SECTION SHALL BE BASED ONLY ON AN UNAUTHORIZED ALIEN WHO IS
12 OR WAS EMPLOYED BY THE EMPLOYER AFTER AN ACTION HAS BEEN BROUGHT FOR A
13 VIOLATION OF SUBSECTION A OF THIS SECTION OR SECTION 23-212, SUBSECTION A.

14 E. FOR ANY ACTION IN SUPERIOR COURT UNDER THIS SECTION, THE COURT
15 SHALL EXPEDITE THE ACTION, INCLUDING ASSIGNING THE HEARING AT THE EARLIEST
16 PRACTICABLE DATE.

17 F. ON A FINDING OF A VIOLATION OF SUBSECTION A OF THIS SECTION:

18 1. FOR A FIRST VIOLATION OF SUBSECTION A OF THIS SECTION, THE COURT
19 SHALL:

20 (a) ORDER THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF ALL UNAUTHORIZED
21 ALIENS.

22 (b) ORDER THE EMPLOYER TO BE SUBJECT TO A FIVE YEAR PROBATIONARY
23 PERIOD FOR THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK.
24 DURING THE PROBATIONARY PERIOD THE EMPLOYER SHALL FILE QUARTERLY REPORTS IN
25 THE FORM PROVIDED IN SECTION 23-722.01 WITH THE COUNTY ATTORNEY OF EACH NEW
26 EMPLOYEE WHO IS HIRED BY THE EMPLOYER AT THE BUSINESS LOCATION WHERE THE
27 UNAUTHORIZED ALIEN PERFORMED WORK.

28 (c) ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES DESCRIBED
29 IN SUBDIVISION (d) OF THIS PARAGRAPH THAT ARE HELD BY THE EMPLOYER FOR A
30 MINIMUM OF TEN DAYS. THE COURT SHALL BASE ITS DECISION ON THE LENGTH OF THE
31 SUSPENSION UNDER THIS SUBDIVISION ON ANY EVIDENCE OR INFORMATION SUBMITTED TO

1 IT DURING THE ACTION FOR A VIOLATION OF THIS SUBSECTION AND SHALL CONSIDER
2 THE FOLLOWING FACTORS, IF RELEVANT:

3 (i) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE EMPLOYER.

4 (ii) ANY PRIOR MISCONDUCT BY THE EMPLOYER.

5 (iii) THE DEGREE OF HARM RESULTING FROM THE VIOLATION.

6 (iv) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS TO COMPLY WITH ANY
7 APPLICABLE REQUIREMENTS.

8 (v) THE DURATION OF THE VIOLATION.

9 (vi) THE ROLE OF THE DIRECTORS, OFFICERS OR PRINCIPALS OF THE EMPLOYER
10 IN THE VIOLATION.

11 (vii) ANY OTHER FACTORS THE COURT DEEMS APPROPRIATE.

12 (d) ORDER THE EMPLOYER TO FILE A SIGNED SWORN AFFIDAVIT WITH THE
13 COUNTY ATTORNEY. THE AFFIDAVIT SHALL STATE THAT THE EMPLOYER HAS TERMINATED
14 THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS IN THIS STATE AND THAT THE EMPLOYER
15 WILL NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN IN THIS
16 STATE. THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL
17 LICENSES SUBJECT TO THIS SUBDIVISION THAT ARE HELD BY THE EMPLOYER IF THE
18 EMPLOYER FAILS TO FILE A SIGNED SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY
19 WITHIN THREE BUSINESS DAYS AFTER THE ORDER IS ISSUED. ALL LICENSES THAT ARE
20 SUSPENDED UNDER THIS SUBDIVISION FOR FAILING TO FILE A SIGNED SWORN AFFIDAVIT
21 SHALL REMAIN SUSPENDED UNTIL THE EMPLOYER FILES A SIGNED SWORN AFFIDAVIT WITH
22 THE COUNTY ATTORNEY. FOR THE PURPOSES OF THIS SUBDIVISION, THE LICENSES THAT
23 ARE SUBJECT TO SUSPENSION UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE
24 HELD BY THE EMPLOYER SPECIFIC TO THE BUSINESS LOCATION WHERE THE UNAUTHORIZED
25 ALIEN PERFORMED WORK. IF THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO
26 THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK, BUT A
27 LICENSE IS NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE
28 LICENSES THAT ARE SUBJECT TO SUSPENSION UNDER THIS SUBDIVISION ARE ALL
29 LICENSES THAT ARE HELD BY THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF
30 BUSINESS. ON RECEIPT OF THE COURT'S ORDER AND NOTWITHSTANDING ANY OTHER LAW,
31 THE APPROPRIATE AGENCIES SHALL SUSPEND THE LICENSES ACCORDING TO THE COURT'S
32 ORDER. THE COURT SHALL SEND A COPY OF THE COURT'S ORDER TO THE ATTORNEY

1 GENERAL AND THE ATTORNEY GENERAL SHALL MAINTAIN THE COPY PURSUANT TO
2 SUBSECTION G OF THIS SECTION.

3 2. FOR A SECOND VIOLATION, AS DESCRIBED IN PARAGRAPH 3 OF THIS
4 SUBSECTION, THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO PERMANENTLY
5 REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER SPECIFIC TO THE BUSINESS
6 LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. IF THE EMPLOYER DOES
7 NOT HOLD A LICENSE SPECIFIC TO THE BUSINESS LOCATION WHERE THE UNAUTHORIZED
8 ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO OPERATE THE EMPLOYER'S
9 BUSINESS IN GENERAL, THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO
10 PERMANENTLY REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AT THE
11 EMPLOYER'S PRIMARY PLACE OF BUSINESS. ON RECEIPT OF THE ORDER AND
12 NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE AGENCIES SHALL IMMEDIATELY
13 REVOKE THE LICENSES.

14 3. THE VIOLATION SHALL BE CONSIDERED:

15 (a) A FIRST VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE
16 VIOLATION DID NOT OCCUR DURING A PROBATIONARY PERIOD ORDERED BY THE COURT
17 UNDER THIS SUBSECTION OR SECTION 23-212, SUBSECTION A FOR THAT EMPLOYER'S
18 BUSINESS LOCATION.

19 (b) A SECOND VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE
20 VIOLATION OCCURRED DURING A PROBATIONARY PERIOD ORDERED BY THE COURT UNDER
21 THIS SUBSECTION OR SECTION 23-212, SUBSECTION A FOR THAT EMPLOYER'S BUSINESS
22 LOCATION.

23 G. THE ATTORNEY GENERAL SHALL MAINTAIN COPIES OF COURT ORDERS THAT ARE
24 RECEIVED PURSUANT TO SUBSECTION F OF THIS SUBSECTION AND SHALL MAINTAIN A
25 DATABASE OF THE EMPLOYERS AND BUSINESS LOCATIONS WHO HAVE A FIRST VIOLATION
26 OF SUBSECTION A AND MAKE THE COURT ORDERS AVAILABLE ON THE ATTORNEY GENERAL'S
27 WEBSITE.

28 H. ON DETERMINING WHETHER AN EMPLOYEE IS AN UNAUTHORIZED ALIEN, THE
29 COURT SHALL CONSIDER ONLY THE FEDERAL GOVERNMENT'S DETERMINATION PURSUANT TO
30 8 UNITED STATES CODE SECTION 1373(c). THE FEDERAL GOVERNMENT'S DETERMINATION
31 CREATES A REBUTTABLE PRESUMPTION OF THE EMPLOYEE'S LAWFUL STATUS. THE COURT
32 MAY TAKE JUDICIAL NOTICE OF THE FEDERAL GOVERNMENT'S DETERMINATION AND MAY

1 REQUEST THE FEDERAL GOVERNMENT TO PROVIDE AUTOMATED OR TESTIMONIAL
2 VERIFICATION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

3 I. FOR THE PURPOSES OF THIS SECTION, PROOF OF VERIFYING THE EMPLOYMENT
4 AUTHORIZATION OF AN EMPLOYEE THROUGH THE E-VERIFY PROGRAM CREATES A
5 REBUTTABLE PRESUMPTION THAT AN EMPLOYER DID NOT INTENTIONALLY EMPLOY AN
6 UNAUTHORIZED ALIEN.

7 J. FOR THE PURPOSES OF THIS SECTION, AN EMPLOYER WHO ESTABLISHES THAT
8 IT HAS COMPLIED IN GOOD FAITH WITH THE REQUIREMENTS OF 8 UNITED STATES CODE
9 SECTION 1324a(b) ESTABLISHES AN AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID NOT
10 INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN. AN EMPLOYER IS CONSIDERED TO
11 HAVE COMPLIED WITH THE REQUIREMENTS OF 8 UNITED STATES CODE SECTION 1324a(b),
12 NOTWITHSTANDING AN ISOLATED, SPORADIC OR ACCIDENTAL TECHNICAL OR PROCEDURAL
13 FAILURE TO MEET THE REQUIREMENTS, IF THERE IS A GOOD FAITH ATTEMPT TO COMPLY
14 WITH THE REQUIREMENTS.

15 Sec. 6. Section 23-214, Arizona Revised Statutes, is amended to read:

16 23-214. Verification of employment eligibility: E-verify program

17 After December 31, 2007, every employer, after hiring an employee,
18 shall verify the employment eligibility of the employee through the ~~basic~~
19 ~~pilot~~ E-VERIFY program.

20 Sec. 7. Title 23, chapter 2, article 2, Arizona Revised Statutes, is
21 amended by adding sections 23-215 and 23-216, to read:

22 23-215. Voluntary employer enhanced compliance program: program
23 termination

24 A. THE ATTORNEY GENERAL SHALL ESTABLISH THE VOLUNTARY EMPLOYER
25 ENHANCED COMPLIANCE PROGRAM. THE PROGRAM IS VOLUNTARY AND AN EMPLOYER SHALL
26 NOT BE REQUIRED TO ENROLL IN THE PROGRAM.

27 B. AN EMPLOYER THAT IS ON PROBATION UNDER SECTION 23-212 OR 23-212.01
28 MAY NOT ENROLL IN THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM. A
29 COURT SHALL NOT CONSIDER NONENROLLMENT IN THE VOLUNTARY EMPLOYER ENHANCED
30 COMPLIANCE PROGRAM AS A FACTOR WHEN DETERMINING WHETHER TO SUSPEND OR REVOKE
31 A LICENSE UNDER SECTION 23-212 OR 23-212.01.

1 C. TO ENROLL IN THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM, AN
2 EMPLOYER SHALL SUBMIT A SIGNED SWORN AFFIDAVIT TO THE ATTORNEY GENERAL. THE
3 AFFIDAVIT SHALL STATE THAT THE EMPLOYER AGREES TO PERFORM ALL OF THE
4 FOLLOWING ACTIONS IN GOOD FAITH:

5 1. AFTER HIRING AN EMPLOYEE, THE EMPLOYER SHALL VERIFY THE EMPLOYMENT
6 ELIGIBILITY OF THE EMPLOYEE THROUGH THE E-VERIFY PROGRAM.

7 2. TO ENSURE THE ACCURACY OF REPORTING WAGES TO THE SOCIAL SECURITY
8 ADMINISTRATION, THE EMPLOYER SHALL VERIFY THE ACCURACY OF SOCIAL SECURITY
9 NUMBERS THROUGH THE SOCIAL SECURITY NUMBER VERIFICATION SERVICE FOR ANY
10 EMPLOYEE WHO IS NOT VERIFIED THROUGH THE E-VERIFY PROGRAM. WITHIN THIRTY
11 DAYS AFTER ENROLLING IN THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM,
12 THE EMPLOYER SHALL SUBMIT THE NECESSARY INFORMATION TO THE SOCIAL SECURITY
13 NUMBER VERIFICATION SERVICE, INCLUDING THE FULL NAME, THE SOCIAL SECURITY
14 NUMBER, THE DATE OF BIRTH AND THE GENDER FOR EACH EMPLOYEE. ON RECEIPT OF A
15 FAILED VERIFICATION RESULT, THE EMPLOYER SHALL NOTIFY THE EMPLOYEE OF THE
16 DATE ON WHICH THE EMPLOYER RECEIVED THE FAILED RESULT AND INSTRUCT THE
17 EMPLOYEE TO RESOLVE THE DISCREPANCY WITH THE SOCIAL SECURITY ADMINISTRATION
18 WITHIN NINETY DAYS AFTER THAT DATE. THE EMPLOYER AND EMPLOYEE SHALL RESOLVE
19 ANY FAILED RESULT WITHIN NINETY DAYS AFTER THE DATE ON WHICH THE EMPLOYER
20 RECEIVED THE FAILED RESULT. IF THE FAILED RESULT IS NOT RESOLVED WITHIN THE
21 NINETY-DAY PERIOD BUT THE EMPLOYER AND EMPLOYEE ARE CONTINUING TO ACTIVELY
22 AND CONSISTENTLY WORK TOWARD RESOLVING THE FAILED RESULT WITH THE SOCIAL
23 SECURITY ADMINISTRATION, THE NINETY-DAY PERIOD DOES NOT APPLY AS LONG AS THE
24 EMPLOYER AND EMPLOYEE HAVE DOCUMENTED PROOF OF THESE ONGOING EFFORTS TO
25 RESOLVE THE FAILED RESULT IN GOOD FAITH AND HAVE PROVIDED THE DOCUMENTED
26 PROOF TO THE ATTORNEY GENERAL. THE EMPLOYER SHALL VERIFY THE ACCURACY OF THE
27 SOCIAL SECURITY NUMBERS AND RESOLVE ANY FAILED VERIFICATION RESULTS IN A
28 CONSISTENT MANNER FOR ALL EMPLOYEES.

29 3. IN RESPONSE TO A WRITTEN REQUEST BY THE ATTORNEY GENERAL OR COUNTY
30 ATTORNEY STATING THE NAME OF AN EMPLOYEE FOR WHOM A COMPLAINT HAS BEEN
31 RECEIVED UNDER SECTION 23-212 OR 23-212.01, THE EMPLOYER SHALL PROVIDE THE
32 ATTORNEY GENERAL OR COUNTY ATTORNEY THE DOCUMENTS INDICATING THAT THE

1 EMPLOYEE WAS VERIFIED THROUGH THE E-VERIFY PROGRAM OR THAT THE ACCURACY OF
2 THE EMPLOYEE'S WAGE REPORT WAS VERIFIED THROUGH THE SOCIAL SECURITY NUMBER
3 VERIFICATION SERVICE UNDER THIS SECTION.

4 D. AN EMPLOYER THAT IS ENROLLED IN THE VOLUNTARY EMPLOYER ENHANCED
5 COMPLIANCE PROGRAM SHALL NOT BE IN VIOLATION OF SECTION 23-212, SUBSECTION A
6 OR SECTION 23-212.01, SUBSECTION A REGARDING AN EMPLOYEE NAMED IN A COMPLAINT
7 UNDER SECTION 23-212 OR 23-212.01 IF THE EMPLOYER HAS COMPLETED BOTH OF THE
8 FOLLOWING:

9 1. IN GOOD FAITH VERIFIED THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE
10 NAMED IN THE COMPLAINT THROUGH THE E-VERIFY PROGRAM OR IN GOOD FAITH VERIFIED
11 THE ACCURACY OF THE SOCIAL SECURITY NUMBER OF THE EMPLOYEE NAMED IN THE
12 COMPLAINT THROUGH THE SOCIAL SECURITY NUMBER VERIFICATION SYSTEM AS REQUIRED
13 BY SUBSECTION C, PARAGRAPHS 1 AND 2 OF THIS SECTION.

14 2. PROVIDED THE ATTORNEY GENERAL OR COUNTY ATTORNEY WITH THE
15 DOCUMENTS, AS REQUIRED BY SUBSECTION C, PARAGRAPH 3 OF THIS SECTION,
16 INDICATING THAT THE EMPLOYER VERIFIED THE EMPLOYEE NAMED IN THE COMPLAINT.

17 E. THE ATTORNEY GENERAL SHALL MAINTAIN A LIST OF EMPLOYERS ENROLLED IN
18 THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM AND MAKE THE LIST
19 AVAILABLE ON THE ATTORNEY GENERAL'S WEBSITE.

20 F. THE ATTORNEY GENERAL SHALL DEVELOP A FORM OF RECOGNITION THAT AN
21 EMPLOYER MAY DISPLAY TO THE GENERAL PUBLIC FOR ENROLLING IN THE VOLUNTARY
22 EMPLOYER ENHANCED COMPLIANCE PROGRAM.

23 G. IF AN EMPLOYER DOES NOT FULLY COMPLY WITH THIS SECTION, THE
24 ATTORNEY GENERAL SHALL TERMINATE THE EMPLOYER'S ENROLLMENT IN THE VOLUNTARY
25 EMPLOYER ENHANCED COMPLIANCE PROGRAM. AT ANY TIME, AN EMPLOYER MAY
26 VOLUNTARILY WITHDRAW FROM THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM
27 BY NOTIFYING THE ATTORNEY GENERAL. BEGINNING ON THE DATE OF TERMINATION OR
28 WITHDRAWAL, SUBSECTION D OF THIS SECTION NO LONGER APPLIES TO THE EMPLOYER
29 AND THE EMPLOYER SHALL IMMEDIATELY REMOVE ANY FORM OF RECOGNITION FROM PUBLIC
30 DISPLAY THAT IS AUTHORIZED UNDER THIS SECTION.

31 H. THE PROGRAM ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2018
32 PURSUANT TO SECTION 41-3102.

23-216. Independent contractors; applicability

FOR THE PURPOSES OF THIS ARTICLE, INDEPENDENT CONTRACTOR APPLIES TO AN INDIVIDUAL WHO PERFORMS SERVICES AND IS NOT AN EMPLOYEE PURSUANT TO SECTION 3508 OF THE INTERNAL REVENUE CODE.

Sec. 8. Title 23, chapter 2, article 7, Arizona Revised Statutes, is amended by adding section 23-361.01, to read:

23-361.01. Employer requirements; cash payments; unlawful practices; civil penalty

A. AN EMPLOYER THAT HAS TWO OR MORE EMPLOYEES AND PAYS HOURLY WAGES OR SALARY BY CASH TO ANY EMPLOYEE SHALL COMPLY WITH ALL OF THE FOLLOWING:

1. THE INCOME TAX WITHHOLDING LAWS PRESCRIBED IN TITLE 43, CHAPTER 4.
2. THE EMPLOYER REPORTING LAWS PRESCRIBED IN SECTION 23-722.01.
3. THE EMPLOYMENT SECURITY LAWS PRESCRIBED IN CHAPTER 4 OF THIS TITLE.
4. THE WORKERS' COMPENSATION LAWS PRESCRIBED IN CHAPTER 6 OF THIS

TITLE.

B. FOR A VIOLATION OF SUBSECTION A OF THIS SECTION, THE ATTORNEY GENERAL MAY BRING AN ACTION IN SUPERIOR COURT AGAINST AN EMPLOYER. ON A FINDING OF A VIOLATION OF SUBSECTION A OF THIS SECTION, THE COURT SHALL ORDER THE EMPLOYER TO PAY A CIVIL PENALTY THAT IS EQUAL TO TREBLE THE AMOUNT OF ALL WITHHOLDINGS, PAYMENTS, CONTRIBUTIONS OR PREMIUMS THAT THE EMPLOYER FAILED TO REMIT AS PRESCRIBED BY SUBSECTION A OF THIS SECTION OR FIVE THOUSAND DOLLARS FOR EACH EMPLOYEE FOR WHOM A VIOLATION WAS COMMITTED, WHICHEVER IS GREATER.

C. THE COURT SHALL TRANSMIT THE MONIES COLLECTED PURSUANT TO SUBSECTION B OF THIS SECTION TO THE STATE TREASURER, AND THE STATE TREASURER SHALL DEPOSIT THE MONIES IN THE STATE GENERAL FUND. MONIES DEPOSITED IN THE STATE GENERAL FUND PURSUANT TO THIS SUBSECTION SHALL BE EQUALLY APPROPRIATED TO THE DEPARTMENT OF EDUCATION AND THE DEPARTMENT OF HEALTH SERVICES FOR THE PURPOSES OF OFFSETTING INCREASED COSTS TO THIS STATE BY UNAUTHORIZED ALIENS.

D. THE CIVIL PENALTY UNDER THIS SECTION IS IN ADDITION TO ANY OTHER PENALTIES THAT MAY BE IMPOSED BY LAW.

Sec. 9. Title 41, chapter 6, Arizona Revised Statutes, is amended by adding article 7.2, to read:

ARTICLE 7.2. LICENSING ELIGIBILITY

41-1080. Licensing eligibility; authorized presence;
documentation; applicability

A. AN AGENCY OR POLITICAL SUBDIVISION OF THIS STATE SHALL NOT ISSUE A LICENSE TO AN INDIVIDUAL IF THE INDIVIDUAL DOES NOT PRESENT ANY OF THE FOLLOWING DOCUMENTS TO THE AGENCY INDICATING THAT THE INDIVIDUAL'S PRESENCE IN THE UNITED STATES IS AUTHORIZED UNDER FEDERAL LAW:

1. AN ARIZONA DRIVER LICENSE ISSUED AFTER 1996 OR AN ARIZONA NONOPERATING IDENTIFICATION LICENSE.

2. A DRIVER LICENSE ISSUED BY A STATE THAT VERIFIES LAWFUL PRESENCE IN THE UNITED STATES.

3. A BIRTH CERTIFICATE OR DELAYED BIRTH CERTIFICATE ISSUED IN ANY STATE, TERRITORY OR POSSESSION OF THE UNITED STATES.

4. A UNITED STATES CERTIFICATE OF BIRTH ABROAD.

5. A UNITED STATES PASSPORT.

6. A FOREIGN PASSPORT WITH A UNITED STATES VISA.

7. AN I-94 FORM WITH A PHOTOGRAPH.

8. A UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES EMPLOYMENT AUTHORIZATION DOCUMENT OR REFUGEE TRAVEL DOCUMENT.

9. A UNITED STATES CERTIFICATE OF NATURALIZATION.

10. A UNITED STATES CERTIFICATE OF CITIZENSHIP.

11. A TRIBAL CERTIFICATE OF INDIAN BLOOD.

12. A TRIBAL OR BUREAU OF INDIAN AFFAIRS AFFIDAVIT OF BIRTH.

B. THIS SECTION DOES NOT APPLY TO AN INDIVIDUAL, IF ALL OF THE FOLLOWING APPLY:

1. THE INDIVIDUAL IS A CITIZEN OF A FOREIGN COUNTRY OR, IF AT THE TIME OF APPLICATION, THE INDIVIDUAL RESIDES IN A FOREIGN COUNTRY.

2. THE BENEFITS THAT ARE RELATED TO THE LICENSE DO NOT REQUIRE THE INDIVIDUAL TO BE PRESENT IN THE UNITED STATES IN ORDER TO RECEIVE THOSE BENEFITS.

1 Sec. 10. Section 43-1021, Arizona Revised Statutes, is amended to
2 read:

3 43-1021. Additions to Arizona gross income

4 In computing Arizona adjusted gross income, the following amounts shall
5 be added to Arizona gross income:

6 1. A beneficiary's share of the fiduciary adjustment to the extent
7 that the amount determined by section 43-1333 increases the beneficiary's
8 Arizona gross income.

9 2. An amount equal to the "ordinary income portion" of a lump sum
10 distribution that was excluded from federal adjusted gross income pursuant to
11 section 402(d) of the internal revenue code.

12 3. The amount of interest income received on obligations of any state,
13 territory or possession of the United States, or any political subdivision
14 thereof, located outside the state of Arizona, reduced, for tax years
15 beginning from and after December 31, 1996, by the amount of any interest on
16 indebtedness and other related expenses that were incurred or continued to
17 purchase or carry those obligations and that are not otherwise deducted or
18 subtracted in arriving at Arizona gross income.

19 4. Annuity income received during the taxable year to the extent that
20 the sum of the proceeds received from such annuity in all taxable years prior
21 to and including the current taxable year exceeds the total consideration and
22 premiums paid by the taxpayer. This paragraph applies only to those
23 annuities with respect to which the first payment was received prior to
24 December 31, 1978.

25 5. The excess of a partner's share of partnership taxable income
26 required to be included under chapter 14, article 2 of this title over the
27 income required to be reported under section 702(a)(8) of the internal
28 revenue code.

29 6. The excess of a partner's share of partnership losses determined
30 pursuant to section 702(a)(8) of the internal revenue code over the losses
31 allowable under chapter 14, article 2 of this title.

1 7. The amount by which the adjusted basis of property described in
2 this paragraph and computed pursuant to the internal revenue code exceeds the
3 adjusted basis of such property computed pursuant to this title and the
4 income tax act of 1954, as amended. This paragraph shall apply to all
5 property which is held for the production of income and which is sold or
6 otherwise disposed of during the taxable year, except depreciable property
7 used in a trade or business.

8 8. The amount of depreciation or amortization of costs of any capital
9 investment that is deducted pursuant to section 167 or 179 of the internal
10 revenue code by a qualified defense contractor with respect to which an
11 election is made to amortize pursuant to section 43-1024.

12 9. The amount of gain from the sale or other disposition of a capital
13 investment which a qualified defense contractor has elected to amortize
14 pursuant to section 43-1024.

15 10. Amounts withdrawn from the Arizona state retirement system, the
16 corrections officer retirement plan, the public safety personnel retirement
17 system, the elected officials' retirement plan or a county or city retirement
18 plan by an employee upon termination of employment before retirement to the
19 extent they were deducted in arriving at Arizona taxable income in any year.

20 11. That portion of the net operating loss included in federal adjusted
21 gross income which has already been taken as a net operating loss for Arizona
22 purposes or which is separately taken as a subtraction under the special net
23 operating loss transition rule.

24 12. Any nonitemized amount deducted pursuant to section 170 of the
25 internal revenue code representing contributions to an educational
26 institution which denies admission, enrollment or board and room
27 accommodations on the basis of race, color or ethnic background except those
28 institutions primarily established for the education of American Indians.

29 13. The amount paid as taxes on property in this state with respect to
30 which a credit is claimed under section 43-1078.

1 14. Amounts withdrawn from a medical savings account by the individual
2 during the taxable year computed pursuant to section 220(f) of the internal
3 revenue code and not included in federal adjusted gross income.

4 15. Any amount of agricultural water conservation expenses that were
5 deducted pursuant to the internal revenue code for which a credit is claimed
6 under section 43-1084.

7 16. The amount by which the depreciation or amortization computed under
8 the internal revenue code with respect to property for which a credit was
9 taken under section 43-1080 exceeds the amount of depreciation or
10 amortization computed pursuant to the internal revenue code on the Arizona
11 adjusted basis of the property.

12 17. The amount by which the adjusted basis computed under the internal
13 revenue code with respect to property for which a credit was claimed under
14 section 43-1080 and which is sold or otherwise disposed of during the taxable
15 year exceeds the adjusted basis of the property computed under section
16 43-1080.

17 18. The amount by which the depreciation or amortization computed under
18 the internal revenue code with respect to property for which a credit was
19 taken under either section 43-1081 or 43-1081.01 exceeds the amount of
20 depreciation or amortization computed pursuant to the internal revenue code
21 on the Arizona adjusted basis of the property.

22 19. The amount by which the adjusted basis computed under the internal
23 revenue code with respect to property for which a credit was claimed under
24 section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise
25 disposed of during the taxable year exceeds the adjusted basis of the
26 property computed under section 43-1074.02, 43-1081 or 43-1081.01, as
27 applicable.

28 20. The deduction referred to in section 1341(a)(4) of the internal
29 revenue code for restoration of a substantial amount held under a claim of
30 right.

31 21. The amount by which a net operating loss carryover or capital loss
32 carryover allowable pursuant to section 1341(b)(5) of the internal revenue

1 code exceeds the net operating loss carryover or capital loss carryover
2 allowable pursuant to section 43-1029, subsection F.

3 22. Any amount deducted pursuant to section 170 of the internal revenue
4 code representing contributions to a school tuition organization or a public
5 school for which a credit is claimed under section 43-1089 or 43-1089.01.

6 23. Any amount deducted in computing Arizona gross income as expenses
7 for installing solar stub outs or electric vehicle recharge outlets in this
8 state with respect to which a credit is claimed pursuant to section 43-1090.

9 24. Any wage expenses deducted pursuant to the internal revenue code
10 for which a credit is claimed under section 43-1087 and representing net
11 increases in qualified employment positions for employment of temporary
12 assistance for needy families recipients.

13 25. Any amount deducted for conveying ownership or development rights
14 of property to an agricultural preservation district under section 48-5702
15 for which a credit is claimed under section 43-1081.02.

16 26. The amount of any depreciation allowance allowed pursuant to
17 section 167(a) of the internal revenue code to the extent not previously
18 added.

19 27. With respect to property for which an expense deduction was taken
20 pursuant to section 179 of the internal revenue code, the amount in excess of
21 twenty-five thousand dollars.

22 28. The amount of any deductions that are claimed in computing federal
23 adjusted gross income representing expenses for which a credit is claimed
24 under either section 43-1075 or 43-1075.01 or both.

25 29. The amount by which the depreciation or amortization computed under
26 the internal revenue code with respect to property for which a credit was
27 taken under section 43-1090.01 exceeds the amount of depreciation or
28 amortization computed pursuant to the internal revenue code on the Arizona
29 adjusted basis of the property.

30 30. The amount by which the adjusted basis computed under the internal
31 revenue code with respect to property for which a credit was claimed under
32 section 43-1090.01 and which is sold or otherwise disposed of during the

1 taxable year exceeds the adjusted basis of the property computed under
2 section 43-1090.01.

3 31. The amount of a nonqualified withdrawal, as defined in section
4 15-1871, from a college savings plan established pursuant to section 529 of
5 the internal revenue code that is made to a distributee to the extent the
6 amount is not included in computing federal adjusted gross income, except
7 that the amount added under this paragraph shall not exceed the difference
8 between the amount subtracted under section 43-1022 in prior taxable years
9 and the amount added under THIS section ~~43-1021~~ in any prior taxable years.

10 32. THE AMOUNT OF SALARY OR OTHER COMPENSATION THAT IS PAID TO AN
11 EMPLOYEE AND THAT IS DEDUCTED AS A BUSINESS EXPENSE UNDER SECTION 162 OF THE
12 INTERNAL REVENUE CODE. THIS PARAGRAPH APPLIES ONLY TO A TAXPAYER THAT FAILS
13 TO COMPLY WITH SECTION 23-214 ON OR AFTER AUGUST 1, 2008.

14 Sec. 11. Section 43-1121, Arizona Revised Statutes, is amended to
15 read:

16 43-1121. Additions to Arizona gross income: corporations

17 In computing Arizona taxable income for a corporation, the following
18 amounts shall be added to Arizona gross income:

19 1. The amounts computed pursuant to section 43-1021, paragraphs 3
20 through 9, 12, 26 and 27.

21 2. The amount of dividend income received from corporations and
22 allowed as a deduction pursuant to sections 243, 244 and 245 of the internal
23 revenue code.

24 3. Taxes which are based on income paid to states, local governments
25 or foreign governments and which were deducted in computing federal taxable
26 income.

27 4. Expenses and interest relating to tax-exempt income on indebtedness
28 incurred or continued to purchase or carry obligations the interest on which
29 is wholly exempt from the tax imposed by this title. Financial institutions,
30 as defined in section 6-101, shall be governed by section 43-961,
31 paragraph 2.

1 5. Commissions, rentals and other amounts paid or accrued to a
2 domestic international sales corporation controlled by the payor corporation
3 if the domestic international sales corporation is not required to report its
4 taxable income to this state because its income is not derived from or
5 attributable to sources within this state. If the domestic international
6 sales corporation is subject to article 4 of this chapter, the department
7 shall prescribe by rule the method of determining the portion of the
8 commissions, rentals and other amounts which are paid or accrued to the
9 controlled domestic international sales corporation and which shall be
10 deducted by the payor. "Control" for purposes of this paragraph means direct
11 or indirect ownership or control of fifty per cent or more of the voting
12 stock of the domestic international sales corporation by the payor
13 corporation.

14 6. Federal income tax refunds received during the taxable year to the
15 extent they were deducted in arriving at Arizona taxable income in a previous
16 year.

17 7. The amount of net operating loss taken pursuant to section 172 of
18 the internal revenue code.

19 8. The amount of exploration expenses determined pursuant to section
20 617 of the internal revenue code to the extent that they exceed seventy-five
21 thousand dollars and to the extent that the election is made to defer those
22 expenses not in excess of seventy-five thousand dollars.

23 9. Amortization of costs incurred to install pollution control devices
24 and deducted pursuant to the internal revenue code or the amount of deduction
25 for depreciation taken pursuant to the internal revenue code on pollution
26 control devices for which an election is made pursuant to section 43-1129.

27 10. The amount of depreciation or amortization of costs of child care
28 facilities deducted pursuant to section 167 or 188 of the internal revenue
29 code for which an election is made to amortize pursuant to section 43-1130.

30 11. Arizona state income tax refunds received, to the extent the amount
31 of the refunds is not already included in Arizona gross income, if a tax
32 benefit was derived by deduction of this amount in a prior year.

1 12. The amount paid as taxes on property in this state by a qualified
2 defense contractor with respect to which a credit is claimed under section
3 43-1166.

4 13. The loss of an insurance company that is exempt under section
5 43-1201 to the extent that it is included in computing Arizona gross income
6 on a consolidated return pursuant to section 43-947.

7 14. The amount by which the depreciation or amortization computed under
8 the internal revenue code with respect to property for which a credit was
9 taken under section 43-1169 exceeds the amount of depreciation or
10 amortization computed pursuant to the internal revenue code on the Arizona
11 adjusted basis of the property.

12 15. The amount by which the adjusted basis computed under the internal
13 revenue code with respect to property for which a credit was claimed under
14 section 43-1169 and which is sold or otherwise disposed of during the taxable
15 year exceeds the adjusted basis of the property computed under section
16 43-1169.

17 16. The amount by which the depreciation or amortization computed under
18 the internal revenue code with respect to property for which a credit was
19 taken under either section 43-1170 or 43-1170.01 exceeds the amount of
20 depreciation or amortization computed pursuant to the internal revenue code
21 on the Arizona adjusted basis of the property.

22 17. The amount by which the adjusted basis computed under the internal
23 revenue code with respect to property for which a credit was claimed under
24 either section 43-1170 or 43-1170.01 and which is sold or otherwise disposed
25 of during the taxable year exceeds the adjusted basis of the property
26 computed under section 43-1170 or 43-1170.01, as applicable.

27 18. The deduction referred to in section 1341(a)(4) of the internal
28 revenue code for restoration of a substantial amount held under a claim of
29 right.

30 19. The amount by which a capital loss carryover allowable pursuant to
31 section 1341(b)(5) of the internal revenue code exceeds the capital loss
32 carryover allowable pursuant to section 43-1130.01, subsection F.

1 20. Any amount deducted in computing Arizona taxable income as expenses
2 for installing solar stub outs or electric vehicle recharge outlets in this
3 state with respect to which a credit is claimed pursuant to section 43-1176.

4 21. Any wage expenses deducted pursuant to the internal revenue code
5 for which a credit is claimed under section 43-1175 and representing net
6 increases in qualified employment positions for employment of temporary
7 assistance for needy families recipients.

8 22. Any amount of expenses that were deducted pursuant to the internal
9 revenue code and for which a credit is claimed under section 43-1178.

10 23. Any amount deducted for conveying ownership or development rights
11 of property to an agricultural preservation district under section 48-5702
12 for which a credit is claimed under section 43-1180.

13 24. The amount of any deduction that is claimed in computing Arizona
14 gross income and that represents a donation of a school site for which a
15 credit is claimed under section 43-1181.

16 25. The amount of any deductions that are claimed in computing federal
17 taxable income representing expenses for which a credit is claimed under
18 either section 43-1163 or 43-1163.01 or both.

19 26. Any amount deducted in computing Arizona taxable income as expenses
20 for installing water conservation system plumbing stub outs in this state
21 with respect to which a credit is claimed pursuant to section 43-1182.

22 27. Any amount deducted pursuant to section 170 of the internal revenue
23 code representing contributions to a school tuition organization for which a
24 credit is claimed under section 43-1183.

25 28. THE AMOUNT OF SALARY OR OTHER COMPENSATION THAT IS PAID TO AN
26 EMPLOYEE AND THAT IS DEDUCTED AS A BUSINESS EXPENSE UNDER SECTION 162 OF THE
27 INTERNAL REVENUE CODE. THIS PARAGRAPH APPLIES ONLY TO A TAXPAYER THAT FAILS
28 TO COMPLY WITH SECTION 23-214 ON OR AFTER AUGUST 1, 2008.

29 Sec. 12. Severability

30 If any provision of this act or its application to any person or
31 circumstance is held invalid, the invalidity does not affect other provisions
32 or applications of this act that can be given effect without the invalid

1 provision or application, and to this end the provisions of this act are
2 severable.

3 Sec. 13. Emergency

4 This act is an emergency measure that is necessary to preserve the
5 public peace, health or safety and is operative immediately as provided by
6 law."

7 Amend title to conform

ROBERT "BOB" BURNS

1374rb
03/14/2008
3:44 PM
C: mwb